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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 ANNETTE SUE MASEDA,) Case No.: 1:20-cv-01657 JLT
12 Plaintiff,)
13 v.) ORDER GRANTING IN PART PLAINTIFF’S
14 ANDREW SAUL,) MOTION FOR SUBSTITUTION
15 Commissioner of Social Security,) (Doc. 15)
16 Defendant.)

17 Plaintiff Annette Sue Maseda filed this action for judicial review of an administrative decision
18 denying her application for Social Security benefits. (*See* Doc. 1.) Nicole Schmidt seeks to substitute
19 as plaintiff pursuant to Rule 25 of the Federal Rules of Civil Procedure. (Doc. 15.) For the following
20 reasons, Plaintiff’s motion is **GRANTED in part**.

21 **I. Background**

22 Plaintiff initiated this action by filing a complaint on November 20, 2020. (Doc. 1.) Plaintiff
23 asserted she is disabled, and the findings by the Commissioner to deny her applications for benefits
24 were “not supported by substantial evidence and are contrary to law and regulation.” (*Id.* at 2.)
25 Plaintiff seeks to have the Court reverse the administrative decision and find she is entitled to benefits,
26 or remand the action for further proceedings. (*Id.*)

27 Plaintiff died on March 24, 2021, while this action was pending. (Doc. 15 at 1.) Her daughter,
28 Nicole Schmidt, now seeks substitution as the plaintiff. (*Id.* at 1-2.)

1 **II. Legal Standard**

2 Rule 25(a)(1) governs the issue of substitution, and provides that: “If a party dies and the
3 claim is not extinguished, the court may order substitution of the proper party. A motion for
4 substitution may be made by any party or by the decedent's successor or representative. If the motion
5 is not made within 90 days after service of a statement noting the death, the action by or against the
6 decedent must be dismissed.” Fed.R.Civ.P. 25(a)(1). Therefore, in deciding a motion to substitute
7 under Rule 25(a)(1), the Court must consider whether: (1) the motion is timely, (2) the claims pled are
8 extinguished, and (3) the person being substituted is a proper party. *See id.* If the requirements of
9 Rule 25(a) (1) are met, “[t]he substituted party steps into the same position as [the] original party.”
10 *Hilao v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996). “Rule 25(a) should be applied flexibly
11 and liberally to permit substitution of the party or parties who ... would adequately represent [the
12 decedent's] interests.” *In re Baycol Prods. Litig.*, 616 F.3d 778, 789 (8th Cir. 2010).

13 **III. Discussion and Analysis**

14 **A. Timeliness**

15 The motion now pending before the Court was filed in a timely manner because Plaintiff filed
16 the quest for substitution within 90 days of the death of Annette Sue Maseda.

17 **B. Whether the claims are extinguished**

18 Substitution is limited to claims that are not extinguished by death of a party. The Regulations
19 also provide that certain survivors may be entitled to posthumous payments of benefits. *See* 42 U.S.C.
20 § 1383(b)(1)(A); 20 C.F.R. § 416.542(b). Because the Social Security Act expressly provides for
21 benefits to be paid to survivors in the event she died before collecting benefits owed, Plaintiff’s claims
22 were not necessarily extinguished upon her death.

23 Notably, the complaint indicates that Plaintiff applied for both disability insurance benefits and
24 supplemental security income. (Doc. 1 at 1, ¶1.) Ms. Schmidt does not address the distinction in
25 benefits in filing the motion now before the Court, or explain whether she seeks substitution for both
26 applications. *See Timothy F. v. Saul*, 2020 U.S. Dist. LEXIS 251827 (E.D. Wash. Nov. 5, 2020)
27 (addressing substitution for the DIB claim only, and declining to address the decedent’s SSI claim).
28 However, supplemental security income payments may only be paid to an eligible surviving spouse,

1 and not to an estate. See 20 C.F.R. § 416.542(b). Thus, Plaintiff's claim for SSI payments appear to be
2 extinguished, while the disability insurance benefits remain.

3 **C. Designation of a "proper party"**

4 Rule 25(a)(1) requires evidence that Nicole Schmidt is a successor in interest or legal
5 representative of Annette Sue Maseda. See *Hilao*, 103 F.3d at 766 (applying Rule 25(a)(1) to the legal
6 representatives of the deceased's estate). The Ninth Circuit explained: "It is plain ... that Rule 25(a)(1)
7 applies only to the substitution of legal representatives. That is not only clear from its history; it is
8 implicit in the wording of the provision and in the cases construing it." *Mallonee v. Fahey*, 200 F.2d
9 918, 919 (9th Cir. 1952) (footnote omitted).

10 Plaintiff reports that "Annette Sue Maseda was unmarried at the time of her death, and Nicole
11 Schmidt is [the] Child of Annette Sue Maseda." (Doc. 15 at 1, emphasis omitted.) Ms. Schmidt has
12 provided both her birth certificate and the "Certificate of Death" for her mother to support these
13 assertions. (Doc. 15-2 at 1; Doc. 15-2 at 1.) In addition, Ms. Schmidt reports that she was an only
14 child, and it does not appear another person has a superior right to Ms. Schmidt. (Doc. 15-3 at 2.)
15 Because disability insurance benefits may be paid to a child of the deceased applicant, the Court finds
16 Ms. Schmidt is a proper party for the Title II claim. See 20 C.F.R. § 404.503(b)(2). On the other
17 hand, supplemental security income payments may only be paid to a surviving spouse, and Ms.
18 Schmidt is not a proper party for the Title XVI claim. See *Timothy F.*, 2020 U.S. Dist. LEXIS 251827
19 at* 5-6; see also 20 C.F.R. § 416.542(b) (indicating SSI payments may only be made to an eligible
20 surviving spouse and not to the estate of a recipient).

21 **IV. Conclusion and Order**

22 Ms. Schmidt has presented evidence that establishes that the requirements of Rule 25(a) (1) are
23 satisfied as to Plaintiff's claim for disability insurance benefits, but does not carry this burden with the
24 application for supplemental security income. Accordingly, the Court **ORDERS**:

- 25 1. The motion to substitute Nicole Schmidt as Plaintiff (Doc. 15) is **GRANTED in part**;
- 26 2. Annette Sue Maseda shall remain the named plaintiff with respect to the claim for
27 supplemental security income;
- 28 3. Nicole Schmidt shall be substituted for the disability insurance claim only; and

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4. The Clerk of Court is direct to add Nicole Schmidt as a party-plaintiff and to reflect Jonathan Omar Pena as counsel of record of Ms. Schmidt.

IT IS SO ORDERED.

Dated: June 2, 2021 /s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE